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OCT 23 1969
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 500

NATIONAL KNITTED OUTERWEAR ASSOCIATION, ET AL.,
Petitioners,

v.

TEXTILE AND APPAREL GROUP, AMERICAN IMPORTERS ASSOCIATION, ET AL.,

and

FEDERAL TRADE COMMISSION, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONERS' REPLY BRIEF

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The brief in opposition filed by the respondents Textile and Apparel Group, et al., seeks to avoid the impact of the specific authorization given the Federal Trade Commission by Section 6(a) of the Wool Products Labeling Act "to cooperate with any department or agency of the Government." It does so by asserting

(p. 11) that no agency may undertake to exercise the functions of another agency and by asserting further (pp. 12-13) that there is nothing in this record to indicate any agreement or mutuality by the Bureau of Customs in the adoption of Rule 36.

The very statement of those assertions only compounds the significance of the question presented by the petitions in Nos. 499 and 500. But in point of fact, Rule 36 represents and reflects complete cooperation by two agencies of Government, each acting within its area of expertise as Congress has decreed. The Bureau of Customs exercises its authority under the Tariff Act of 1930, 19 U.S.C. § 1499, to detain goods at the border for inspection to determine compliance with the requirements of the Wool Products Labeling Act. And the Commission cooperates, as Congress has contemplated, by lending its statutory power and expertise in testing those products suspected of being mislabeled and making known its findings.

None of these respective functions spring from Rule 36; rather they come from the Tariff Act and the Wool Products Labeling Act. Rule 36, in other words, does not ordain or dictate what the Bureau shall do with respect to imported wool products. It merely respects and takes cognizance of what the Bureau's functions are with respect to such imports and adds the statutory aid which the Commission can furnish. Such division of responsibility is the very essence of the authorized cooperation and does not reflect any invasion by either agency of the authority delegated to the other.

The respondents, however, have sought to capitalize on the erroneous claim of the Court of Appeals that

the views of the Bureau have not been revealed, the implication being that that Bureau was unaware of Rule 36 prior to its promulgation and was suddenly confronted with a *fait accompli* upon its issuance. But the respondents and the entire import industry know that is not the case and made no such claim prior to the entry of the opinion below.

The record is replete with evidence that Rule 36 was promulgated on December 22, 1967, with the full knowledge and approval of Customs. Indeed, a representative of the Bureau, L. T. Balaban, entered a formal appearance at the public hearing before the Commission on October 26, 1966, at which the views of any and all affected parties were solicited as to the proposed Rule 36. Docket 204-12-1 and 204-12-2, page 3. The Bureau was thus fully and formally advised of the proposed Rule, augmented as it was by numerous informal conferences between Commission and Bureau officials. Reflecting this wide degree of cooperation between the agencies are the following items of record:

(1) On February 10, 1966, Chairman Dixon of the Commission testified before the House Subcommittee on Appropriations that as of that time "We are working toward the promulgation of a new type of procedure between us and Customs" with respect to the importation of misbranded wool products. App., vol. II, Doc. G, Exh. 1, p. 415.

(2) On March 6, 1967, Chairman Dixon again testified before that Subcommittee that

> . . . as a result of what Senator Pastore is talking about the Commission suggested an amended rule. We have rulemaking power under the act to correct this, to set up a procedure at the port of entry.

Now, of course, we got very vigorous support from the domestic manufacturers and we got very vigorous and dire prognostications from the importers. But we have tried to work this out together with the Customs Bureau and all parties involved. I think, sir, that we are very close to a resolution of it.

Mr. Stringer, is that far wrong?

Mr. Stringer is the head of our Bureau of Textiles and Furs and we have this proposal pending right now. It ought to be very close to being resolved.

MR. STRINGER. That is correct, Mr. Chairman. I hope that before too long, after conferences with all concerned, including the State Department, that we will have the import of wool products resolved before too long.

* * * * *

MR. EVINS. Can you not get cooperation from another agency of the Government, the Customs Bureau, where it is imported?

MR. GLENDENING. The Customs Bureau says they do not have the money to furnish the manpower to do the work.

* * * * *

MR. EVINS. . . . I think the Congress is concerned. If every agency of the Government would do its part in this area, there would be substantial progress. . . . [App., vol. II, Doc. G., Exh. 2, pp. 944-946].

(3) Chairman Dixon further testified before the Senate Subcommittee on Appropriations on April 3, 1968, that in trying to work out an equitable procedure that resulted in Rule 36

> . . . we considered coming to Congress to suggest a new amendment to the law but in examination of the act we determined that we had the legal power

> to promulgate a rule, if we followed the proper procedures.
>
> After conferences with the Customs officials, and the industry, the State Department, the Commerce Department, and all, we promulgated such a rule which is referred to as rule 36. [App., vol. II, Doc. G, Exh. 6, pp. 396-397].

(4) An investigator in the Commission's Bureau of Textiles and Furs has stated in an affidavit (App. 108-109) that "both before and after the date Rule 36 went into effect Federal Trade Commission and Bureau of Customs personnel answered numerous questions posed by members of the public, including importers and their representatives, with respect to Rule 36 and the procedures applicable thereto" and that "prior to the effective date of the rule, the general public was adequately advised in the various news media, . . . as well as in written information widely disseminated by the Federal Trade Commission and Bureau of Customs as to the forms required, pre-entry clearance procedures and other matters relative to Rule 36."

The foregoing statements all indicate the close involvement and cooperation of the Bureau of Customs in the development and promulgation of Rule 36. By no means can such statements be dismissed as "hearsay," as respondents would have it (Br. Opp., p. 13, fn. 9). Chairman Dixon was speaking authoritatively and officially to Congress, reflecting the cooperation that did in fact exist between the Commission and Customs.

Certainly there is no requirement, statutory or judicial, that there be a formal "liaison" between two agencies seeking to cooperate pursuant to Congressional authorization. And certainly the failure of the

court below to appreciate and respect the cooperation that did in fact exist in this instance only adds to the appropriateness of granting review of the decision below.

Certiorari should accordingly be granted.

Respectfully submitted,

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